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VIA CM/ECF

Molly C. Dwyer, Clerk of Court
Office of the Clerk
U.S. Court of Appeals for the Ninth Circuit
P.O. Box 193939
San Francisco, CA 94119-3939

RE: Rogan O’Handley v. Shirley Weber et al., 9th Circuit Case No. 22-15071

Dear Ms. Dwyer:

I write to explain why this Court’s non-precedential decision in *Doe v. Google LLC*, No. 21-16934, 2022 WL 17077497 (9th Cir. Nov. 18, 2022), does not support affirmance here.

First, the nexus between Appellees is far more extensive than the nexus at issue in *Doe*. The government action in *Doe* did not involve specific requests by the State to censor speech, but, primarily, general statements by members of Congress that allegedly coerced platforms to block content. 2022 WL 17077497 at *1. By contrast, this case involves the State’s *specific request* for Twitter to censor *specific speech* by a *specific speaker*, all within the context of Appellees’ broader efforts to silence protected expression, which the State itself referred to as a “partnership.” ER at 483–504. This self-described “partnership” to censor protected speech demonstrates the “close connection” that was absent in *Doe*. 2022 WL 17077497 at *3.

Second, the Court in *Doe* did not, as Twitter claims, hold that state action may only exist pursuant to authority “delegated” by the state. Dkt. 69-2 at 1. While such a delegation is sufficient, it is not necessary. 2022 WL 17077497 at *2. Indeed, the Supreme Court has rejected such a formalistic approach to the state-action doctrine. *See Brentwood Academy v. Tennessee Secondary School Athletic Ass’n*, 531 U.S. 288, 301 n.4 (2001). This Court need only determine whether the private action is



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“fairly attributable” to the state, which “is a matter of normative judgment, and the criteria lack rigid simplicity.” *Id.* at 295. While stray comments of individual legislators may not satisfy this standard, 2022 WL 17077497 at *2, the Complaint’s allegations here do, ER at 483–504.

Third, private actors can, of course, be liable under the state-action doctrine. Dkt. 69-2 at 2. The statement by the Court in *Doe* that only the government can be liable is specific to a *compulsion* theory. 2022 WL 17077497 at *3. Here, Appellant contends Twitter is liable under joint-action and nexus theories. App. Br. at 17. *Doe*’s observation therefore has no bearing on these independent bases for state action.

Respectfully submitted,

A handwritten signature in blue ink that reads "Harmeet K. Dhillon". The signature is fluid and cursive, with the first name being the most prominent.

Harmeet K. Dhillon

cc: Counsel of Record (via CM/ECF)